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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

UNITED MINE WORKERS OF AMERICA,
Petitioner,
versus
LOVE AND AMOS COAL COMPANY,
Respondent.
} Number 893.

BRIEF

Of Respondent in Reply to Petition for Writ of Certiorari to the Court of Appeals of Tennessee, Middle Section.

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COUNTER STATEMENT OF QUESTION PRESENTED.

Under the Federal Preemption Doctrine, does a State Court have jurisdiction to award damages under State law against the Petitioner Union for its purposeful and intentional destruction of, and interference with, contract rights of Respondent by force and violence?

STATEMENT OF THE CASE.

The statement of the case presented in Petitioner's Petition for Writ of Certiorari recognizes that the damages sought to be recovered in this action were the result of violence perpetrated by Petitioner. We believe that the statement presented in the Petition fairly gives a resume of the case with one exception: It buries to the point of insignificance the fact that the violent acts of the Petitioner were directed at the Respondent and were intended to interfere with, and destroy, the contract rights of Respondent.

The United States Court of Appeals for the Sixth Circuit had held in the prior Federal case, which was reversed and dismissed in that court, that: "If Love and Amos were damaged as the result of any activities of defendant directed at it, an adequate remedy exists under State law. This is not the type of case contemplated by the Labor Management Act of 1947."

United Mine Workers of America v. Love and Amos Coal Company, 279 F. 2d 716, 729.

The issue of purpose and intent directed at Respondent, Love and Amos Coal Company, received prime attention in the State Courts from the very beginning of the action in the Trial Court. This is shown by the following colloquy between the Trial Court and Respondent's Counsel (Tr. Vol. II, pp. 303-304):

> "The Court: Gentlemen, let me see if I can get you to help me on this now. We have had some discussion of the merits of this particular kind of an action, and it seems to me that we agreed that the general rule was that one who suffers what might be termed secondary damages as an incident to a tort, because

of a contractual relationship of the victim of the tort, would not ordinarily have a right to recover those damages from the tort feasor. I believe we agreed that was the general rule.

Mr. Rowntree: Yes, sir.

The Court: And that this case, if it stands, will have to be an exception to that rule. Are we all agreed on that, up to now?

Mr. Rowntree: I think, your Honor, will have to go into the questions of purpose and intent.

The Court: All right, now, that's what I am leading up to. That in the absence of any specific purpose, or intent, then the wrongful acts, if any, of the defendant, producing, if they did, a cessation of operations of Osborne Coal Company, producing, if they did, a resultant damage to the Love and Amos Coal Company, would not give rise to an action by Love and Amos Coal Company, unless, as I said, there was a specific intent to damage the Love and Amos Coal Company. I believe we sort of beat that out on preliminary argument in this case.

Mr. Rowntree: Yes, sir."

The Tennessee Court of Appeals, in its opinion, sustained the finding that there was purpose and intent to interfere with, and destroy, the contractual rights of Respondent, citing facts which clearly support that conclusion. The Petition does not challenge this finding, but, as stated above, relegates that conclusion to a place of insignificance.

ARGUMENT.

This Court has repeatedly stated that where violence is the means by which injury is perpetrated by a Union, a party injured may still sue under State law in a State Court. **United Automobile Workers v. Russell**, 356 U. S. 634, 2 L. Ed. 2d 1030 (1958); **United Construction Workers v. Laburnum Corporation**, 347 U. S. 656, 98 L. Ed. 1025 (1954); **San Diego Building Trades Council v. Garmon**, 359 U. S. 236, 3 L. Ed. 2d 775 (1959); **Plumbers Local 100 v. Borden**, 373 U. S. 690 (1963). In these cases this Court has recognized that the preservation of causes of action under State law, where the cause of the injury is violence perpetrated by a Union, is essential to save the police power of the State and insure that the State will be able to protect the rights of life, liberty and property of its citizens. The case at bar involves what the Court of Appeals of the Sixth Circuit called "a frightening picture of violence and intimidation." **United Mine Workers of America v. Love and Amos Coal Company**, 279 F. 2d 716, at page 721.

The question presented is not new, as contended by Petitioner, but falls well within the principle established in the foregoing decisions.

As stated in **Garmon**, at 359 U. S. at page 247, 3 L. Ed. 2d. page 784:

> "It is true that we have allowed the States to grant compensation for the consequences, as defined by the traditional law of torts, of conduct marked by violence and imminent threats to the public order. United Auto Workers v. Russell, 356 U. S. 634, 2 L. Ed. 2d 1030, 78 S. Ct. 932; United Constr. Workers

v. Laburnum Corp., 347 U. S. 656, 98 L. Ed. 1025, 74 S. Ct. 833."

Laburnum was in 1954; **Russell** in 1958; **Garmon** reiterated the doctrine in April, 1959, and **Borden** in 1963. Congress has not seen fit in these ten years to change this established doctrine; yet, as we understand it, the effort of UMW at this point is to cut away and remove a part of the State Court's jurisdiction in cases of violence, although this Court has given no grounds or justification for such emasculation of State jurisdiction. If a right or interest recognized and protected by State law has been intentionally injured by the violent conduct of a union, the Supreme Court has repeatedly held that the State Court has jurisdiction to remedy such a wrong. It has not attempted to whittle away or narrowly define the type of right or interest thus protected by State court jurisdiction. It has not attempted to distinguish between personal injury, damage to realty, destruction of tangible personal property, or destruction of contract rights brought about by violent conduct. For example, in **United Automobile Workers v. Russell**, 356 U. S. 634, 2 L. Ed. 2d 1030 (1958), damages had been awarded by the State Court for the destruction of contract rights, i. e., Russell's lost wages under his employment contract. (The Supreme Court, in sustaining the award, recognized the possibility that the NLRB, as well as the State Court, might have jurisdiction to award lost pay; yet it held there was no pre-emption.)

The Petitioner emphasizes the rule pronounced by this Court, preserving State causes of action in cases of violence only where the activity of the union is directed at, and intended to affect the plaintiff, and not where the damage to the plaintiff results indirectly and incidentally without the plaintiff being an intended object of the

activity. But this rule cannot apply here to change the result of this case, because here the State Courts have found that the violent activities were intended to destroy Respondent's contract rights. The Petitioner has ignored this finding.

The Sixth Circuit undoubtedly had in mind this very distinction when it said that Love & Amos would have a cause of action under State law with respect to "Any activities of Defendant directed at it." (279 F. 2d 716, at 729.) And the State Courts have found on clear evidence that the activities were directed at the Respondent and its contract.

There is no merit in the Petitioner's contention that because the violence was applied to Osborne Mining Company, the injuries to Love and Amos Coal Company were, therefore, necessarily indirect or consequential. This is for at least two reasons. First, it is elementary that in cases based upon interference or the inducement of breach of contract the defendant's conduct is generally not applied immediately to the plaintiff, but rather to the other party to the contract whose breach of the contract is sought by the wrongdoer. The breach by the other party (Osborne Mining Company) which was sought by Petitioner might have been procured by many different kinds of conduct, including violence. But the fact that the conduct of the wrongdoer is applied immediately to the other party to the contract rather than the Respondent does not make the damages to the Respondent indirect or consequential. The damages here suffered by Love and Amos are no more indirect or consequential than were the damages in the scores of cases sustaining liability for procuring breach of contract found in the annotation on the subject at 126 A. L. R. 2d 1227. This proposition seems elementary and fundamental, and it is inherent in the very nature of an action for procuring a breach of contract.

Second, the damages here are no different than in any other situation where the defendant intends to injure or damage the plaintiff with respect to a particular right or interest. When the intended injury has been accomplished by the defendant, the resulting damage is never held to be indirect or consequential.

Thus it is said in **52 Am. Jur. 373, Torts, Sec. 19**:

> "A duty with which the law of torts is concerned is the duty to abstain from intentional injury to others, and it is a general rule of the common law that a cause of action arises whenever one person, by an act not in the exercise of a lawful right, causes loss or does damage to another with an intent, either actual or constructive, to produce such harm, and without just or lawful excuse or justifiable cause or occasion."

Violence directed at the other party to a contract is a means by which a breach of the contract may be induced and when violence is used, then the defendant who perpetrates such violence may not resort to the argument of justification. As stated in **62 Corpus Juris, pp. 1138-1139, Torts, Sec. 53**:

> "Even though the circumstances do not establish that the interference was malicious, the means employed are operative in preventing the formation of the contract must, in order that liability in tort may not attach, be lawful and proper in nature; and the conduct of the person responsible for that result is a tort if it involves resort to untruthful, fraudulent, **abusive, violent or coercive means.**" (Emphasis added.)

Had there been no concurrent findings by the State Courts that there was an intent to break up Respondent's contract, had the Union not known of the relationship of

Osborne Mining Company, Love and Amos, and TVA, had it not waged its war on TVA and its coal buying policy "and the get-rich-quick" brokers, had its picket signs not attacked Love and Amos Coal Company, had it not pinpointed in its Journal the tipple at which the Osborne coal would be loaded to be delivered to TVA on the Love and Amos contract (and on the very same page, Exhibit 50, reiterated the attack on TVA's "dog-eat-dog policy") and had all of this not been immediately followed by the descent on that very tipple of a mob led by two of its field workers, then the Petitioner might plausibly argue that the harm to Love and Amos was indirect, consequential, and not contemplated by the Union in its lawless conduct. But that is not the case; the facts are to the contrary: the State Courts have so held; and the Union cannot (nor does it in its Petition) plausibly claim that the injury was not foreseeable, contemplated and intended as a result of its action.

In Summary, it is clear, then, that an action for inducing breach of contract is one of the kinds of State actions which may be brought as a result of violent conduct. This court has repeatedly recognized that causes of action arising under State law are preserved and may be tried in State courts where they arise from violent conduct on the part of Unions, regardless of the Federal Labor Law. The Petitioner has offered no explanation, justification or reason for whittling away this rule with respect to this particular kind of property damage or cause of action arising from violence. And its effort to characterize the injury as indirect or consequential cannot be squared with the clear facts and the State Courts' finding.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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